

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE SIDE

Writ Petition No.1029 of 2004

Usman Jamumia Pathan

Petitioner

Vs.

Smt.Ramzan B. Pathan &amp; ors.

Respondents

Mr.Ramesh Dubey Patil i/b M/s.Ajay Misar & Co. for  
petitioner.

CORAM: B.H.MARLAPALLE,J.

August 07, 2006.

P.C.

. The petitioner-plaintiff had filed Special Civil Suit No.36 of 1983 before the learned Civil Judge, Senior Division at Nashik and prayed for a declaration that the agreement for sale dated 6/11/1982 was illegal. The defendant no.4 had expired and his LRs were brought on record as Defendant Nos.4A to 4D. He had engaged an Advocate after receiving notices from the trial Court but the Advocate never remained present nor did he take any steps to file the Written Statement and consequently an ex-parte order came to be passed on 15/2/1991 directing the suit to proceed. It appears that on

28/7/2003 Defendant Nos.4A to 4D filed an application for setting aside the order dated 18/10/1991 or 15/2/1991 as the case may be. This application has been allowed by the learned 2nd Jt.Civil Judge, Senior Division at Nashik by her order dated 6/11/2003 but by imposing exemplary costs quantified at Rs.1500/-.

. While admitting that the application was filed after 12 years the learned Judge also noted that the said defendants were also impleaded as defendants in Special Civil Suit No.922 of 1993 and they are contesting the same without remaining absent. However, on account of the failure on the part of their Advocate in Special Civil Suit No.36 of 1983, which was renumbered as RCS No.691 of 2000 on its transfer, they could not be made to suffer and being the illiterate women, they are to be given an opportunity to contest the suit, more so when Special Civil Suit No.922 of 1993 was decided in their favour. It is also noted that Special Civil Suit No.36 of 1983 was converted into Regular Civil Suit No.691 of 2000 and the application filed was after about three years. The learned Judge of the trial Court has saddled the applicants with costs of

Rs.1500/- and, therefore, the impugned order is an equitable order. No interference is called for in the same.

. The petition is rejected summarily.

(B.H.MARLAPALLE,J.)